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1. Introduction

India's entry onto the global stage as an emerging superpower in the twentieth century follows a long process of domestic economic reforms. Post independence, the government of Jawaharlal Nehru, favoured social engineering and economic egalitarianism which dampened the spirit of private enterprise and profit. The British Raj was replaced with the License Raj, a vast system of national and state-level licenses and quotas which shackled Indian business. Economic conditions did not improve under the subsequent tenure of Prime Minister Indira Gandhi, who nationalized industries, imposed protectionist policies and implemented stiff restrictions on foreign direct investment. The first real movement to a free market for India occurred in 1991. Led by then Finance Minister Manmohan Singh, the license raj was radically reformed. The rupee was devalued; import controls were dismantled and customs duties slashed; industrial licensing was liberalized and the capital markets opened up. Despite its internal economic reforms, India led the opposition to inclusion of patent and intellectual property rights in a GATT accord for the first three years of the Uruguay Round of negotiations. India and other developing countries viewed the GATT framework as a tool by which wealthy nations would impose strong IPRs as the cost of much-needed access for

the developing world to western markets.[1] Although initially joined in its opposition by other advanced developing countries such as Brazil, Argentina, and Mexico, when these countries changed their positions India was no longer able to "carry the day alone." India feared restrictions on its exports if it did not accept TRIPS.[2] In view of its declining economy in the late 1980s, India could ill afford to lose valuable textile tariff concessions and economic aid from foreign sources such as the International Monetary Fund and the U.S. government. By 1989 India had reversed its anti-TRIPS stance and agreed to serious negotiations over patent protection, while nevertheless maintaining that the extent of patent protection required should vary with an individual country's extent of economic development. India is viewed as the nation primarily responsible for the TRIPS' multi-year transition periods, which the multinational pharmaceutical industry had vociferously opposed.[3] India signed the Uruguay Round Agreements (along with 116 other nations) on April 15,1994, and became a member of the WTO effective January 1, 1995.[4]

[1] Nadia Natasha Seeratan, The Negative Impact of Intellectual Property Patent Rights on Developing Countries: An Examination of the Indian Pharmaceutical Industry

[2] N.K. Chowdhry & J.C. Aggarwal, Dunkel Proposals: The Final Act-1994: Significance for India and the World Trade 13 (1994)

[3] Robert Weissman, A Long, Strange TRIPS: The Pharmaceutical Industry Drive to Harmonize Global Intellectual Property Rules, and the Remaining WTO Legal Alternatives Available to Third World Countries, 17 U. Pa. J. Int'l Econ. L. 1069, 1084-85 (1996).

[4] World Trade Organization, India and the WTO, at http:// www.wto.org/english/thewto_e/ countries_e/india_e.htm (last visited Jan. 20, 2013).

Thus India became obligated to amend its domestic intellectual property laws in order to come into compliance with the WTO's TRIPS Agreement.[5] Certain implementations were required immediately while others could be postponed for the duration of the applicable transition period. Most notably, as a country that had not granted patent protection on pharmaceutical products at the time of its entry into the WTO, India was given ten years, i.e., until January 1, 2005, to fully implement that portion of TRIPS into its laws.[6] The TRIPS-catalyzed transformation of India's patent laws has thus far involved a three-stage process[7] corresponding to three acts amending the Patents Act, 1970. First, a "mailbox" facility was created to establish so-called pipeline protection for pharmaceutical product patent applications filed (but not taken up by the Patent Office for examination) during India's ten-year TRIPS transition period that extended from January 1, 1995 through December 31, 2004. The mailbox procedure, along with exclusive marketing rights (EMRs), was initially implemented by Presidential decree. In the aftermath of a WTO dispute proceeding brought by the U.S., India formally enacted the mailbox facility into law by Parliament's passage of the Patents (Amendment) Act, 1999.[8] Second, the

[5] World Trade Organization, Marrakesh Agreement Establishing the World Trade Organization Art. II (2), available at http:// www.wto.org/english/docs_e/legal_e/04-wto_e.htm (stating that "[t]he agreements and associated legal instruments included in Annexes 1, 2 and 3 . . . are integral parts of this Agreement, binding on all Members").

[6] TRIPS, Art. 65.

[7] Chaudhuri, "Implementation of TRIPS in India, 65-70

[8] The Patents (Amendment) Act, No. 17 of 1999 (1999), available at http://indiacode.nic.in.

Principal Act was amended by the Patents (Amendment) Act, 2002,[9] so as to provide the TRIPS-required twenty-year patent term, reversal of the burden of proof for process patent infringement, and modifications to compulsory licensing requirements. Lastly, India put pharmaceutical product patent protection into full effect as of January 1, 2005, via the Patents (Amendment) Act, 2005.[10] Hence this research is undertaken to understand the implications of emerging regime of patent law.

The issue of monopoly was raised internationally in 1873, when foreign exhibitors refused to display their products at the International Exhibition of Inventions in Vienna because they were afraid that their ideas would be stolen and used for monetary gain by people in the other countries. In order to address these fears the Paris Convention for the protection of Industrial Property was signed in 1883 which paved the way for international design to help inventors protect their intellectual creations from being pirated by others. Today intellectual property is a knotty, multidimensional concept covering the arts, printed media, the internet, and industry.

The establishment of intellectual property right can be traced to a judgment delivered about a century ago by **Justice Paterson**, in **University of London v University of Tutorial Process Ltd**,[11] wherein it was observed:

"What is worth copying, is prima facie worth protecting."

[9] The Patents (Amendment) Act, No. 38 of 2002, http://indiacode.nic.in.
[10] The Patents (Amendment) Act, No. 15 of 2005 (Universal 2005);
[11] University of London v University of Tutorial Process Ltd.1916(2) Ch

History of Patent Law

With the invention of wheel thousands of years ago, the history of invention began. Patents for inventions were first granted in two Italian States in the 15th century. The modern patent law was first introduced by the Atate of Venice in 1474. It was granted for ten years to anyone who invented a new technique. If anyone infringed the patent holder's right, then the infringers were fined 100 ducats.

Origin of the term Patent

The term PATENT has its origin in the term "LETTERS PATENT."

The expression letters patent meant open letters as distinguished from closed letters. These letters patents were instruments which carried the Great Seal of the King of England. It meant that in a way the Crown addressed to all its subjects that it had conferred certain rights and privileges on one or more individuals in the kingdom and those rights should not be infringed by others.

FIRST PATENT

The first recorded patent was issued in Florence in the 15th century:

Fillipo Brunelleschi (architect) won the first patent for technical invention in 1421 as an architect of Florence's remarkable cathedral. He claimed he had invented a new means of conveying goods up the Arno River.

He was intentionally vague on details. He refused to divulge the details unless the State kept others from copying his design. The state complied and Brunelleschi walked away with the right to exclude all new means of transport on the Arno for three years.

First English Patent

In England the first recorded patent was issued to a Flemish Glazier. The amazing fact here was that the patent was issued for a technology which was new to England but already prevalent in other countries. This Flemish Glazier came to England to install stained glass windows in Eton College. Unlike Burnelesschi's patent the technology covered by the patent was new to the country rather than new in itself.

First American Patent

The very first American patent was granted to Hopkins in 1790, for an improvement in the making of potash and pearl ash. The patent was signed by among others, President George Washington and Secretary of State Thomas Jefferson.

Evolution of Patent Regime in India

Information as to the system adopted in ancient India or during the Mogul period either for encouraging inventors or for protecting new industries based on such inventions is very meager. Ancient India had acquired a high

standard of proficiency in art or science. Knowledge was handed on to posterity mainly through chosen disciples or it was kept a secret only through results being made available to public. Much of this knowledge has been lost in the course of ages in the absence of any authoritative records. In the absence of any statutory protection to the inventor or possessor of valuable knowledge, he should have kept it secret and handed it over to a favourite pupil or his kith and kin just prior to his demise and that to on a condition of secrecy being maintained. Such pupils or relatives were not always worthy successors. Though such knowledge is in some cases available in books, the writing is often in cryptic language not capable of easy interpretation. If there indeed had been statutory patent protection many of the possessors of such knowledge might have published it secure in the protection which the law gave them to benefit from their intelligence and industry.

Later History (Modern)

The modern history of patent legislation in India falls into three periods, namely,

- The pre-legislation period
- The period of exclusive privileges
- The period of patents

THE PRE-LEGISLATION PERIOD: 1832-1856

The question of granting patents in India had been engaging the attention of the government since about 1832. The original intention appears to have been to introduce a separate bill for conferring patent rights in respect of each separate invention, as and when there was an application for such rights. The proposal to enact a general legislation for empowering the Governor-General to grant patent rights regulated by such legislation is a latter development.

Under the colonial regime, the prime movers for such legislation were not the local inventors but such persons who already enjoyed a patent protection in England and wanted its coverage to be extended to their products which were being exported to India. These persons made frequent applications to the East India Company for extending their patent protection to the territories of East India Company.

The Period of Exclusive Privileges: 1856-1911

The first codified legislation for protection of inventions in India did not employ the term patent but termed such rights as 'exclusive privileges'. The operative legislation in this regard was Act xv of 1859 which was a modification of earlier Act No. I of 1856. Thus India had acquired a patent law before many European countries, while still under British Colonial Rule.

On the removal of legal obstacles for legislation for grant of patents in India, a Bill was drafted by select committee which was passed by the legislative council and upon receiving the assent of the Governor-General, it was designed as Act No. VI of 1856. In this Act the word patent occurred nowhere. This was done consciously by the select-committee after noticing a problem with such 'patent rights' in English law.

In England, the patent right was derived from the grant of the Crown and was subject to all the rules of law which was applicable to other grants made by the Crown. One of these rules was that the grant was to be construed most strictly against the grantee, and it was absolutely void if it contained any misrecital. The consequences were that the patents were frequently set aside upon purely technical grounds. In order to overcome this difficulty, the Select Committee felt that the inventor should not derive his exclusive privilege from a grant, but he should be entitled to it by law, subject to certain restrictions. Thus the "exclusive rights" conferred by Act No VI of 1856 had their origin in the law of the country, and not in the patents granted by the Crown.

The Period of Colonial Patents: 1912-1947

Though the 1888 Act was passed five years after the passing of the UK Act of 1883, the UK practice in its entirety was not introduced in India, as this country was still unripe for it. But after 23 years of working of the Consolidating and the Amending Act of 1888, in other words, after about 55

years operation of patent law in this country, it became imperative that the law and practice in British India should be brought into closer conformity with those of the UK.

The fresh legislation – Act of 1911 --- was mainly based on the British Inventions and Designs Act, 1907. Only such provisions of 1888 Act were retained as appeared necessary to meet the special conditions in India.

Development of Patent Regime in Independent India

A Patent Enquiry Committee under the chairmanship of Dr. Bakshi Tek Chand was appointed on 1.1.1948. The Committee submitted its final report in April, 1950. Based on the report, Patents Bill, 1953 was introduced in the House of People but it ultimately lapsed.

RAJGOPAL AYYANGAR COMMITTEE

A Second Patent Enquiry Committee under the chairmanship of Rajgopala Ayyangar was appointed in April, 1957. The Committee submitted its final report in 1959. The analysis and recommendations in various aspects of patent law provide very useful guideline for every lawmaker who sits to draft a domestic legislation having supra-national dimensions. Landmark report by Rajgopal Ayyangar guided the framing of Indian patents Act, 1970, the first independently drafted native patent law. The present patent law is an amended version of the same law.

The Patent Act 1970

The Patent Act 1970 was hailed by many developing countries and UNCTAD as one of the most progressive statutes, suitable as a model for the developing countries. It safeguarded the interest of both the inventor and the consumer in a balanced manner. The interests of the public were given priority over the private interests of the patent holders. This Act was a product of deep considerations and long deliberations to synchronize with the Directive Principles of State Policy contained in the Constitution of India

1.1 Objectives of Research Study:

This research study was undertaken with following objectives:

1. To study emerging regime of patent law.
2. To trace evolution of patent system through various eras.
3. To trace evolution of patent systems in different countries over the centuries.
4. To study patent history in India.
5. To analyze impact of TRIPS on patent legislation in India, after India became signatory to WTO.
6. To evaluate the effect of judicial decisions as in Novartis case.

1.2 Hypothesis for Research:

1. Does the original patent law become ineffective due to WTO and GATT?
2. Whether the new law addresses the interests and issues of stakeholders?
3. Was it necessary to make new provisions of 'process', 'product', 'mailbox' and 'evergreening clause?'
4. Whether the new law has negative impact on pharmaceutical industry?
5. Whether the new patent law totally covers the positive and negative effect of market and goods?
6. Whether the new law, totally protects the innovator?
7. What is the overall impact of new patent law in India?
8. Whether section 3(1)(d) of Patent Act, is constitutionally valid and is it at par with Directive Principles of State Policy as mentioned in Part-IV of Indian Constitution.

1.3 Scope of the study

The research was undertaken to study the evolution of patent legislations and systems over different time spans in various countries and particularly in India.

An analysis of Tek Chand Report and Ayyangar Report was made in depth.

Also an effort was made to trace the modern history of patent legislation in India falling into three periods, namely,

- The pre-legislation period
- The period of exclusive privileges
- The period of patents

India being signatory to WTO, various multilateral trade agreements of WTO have also been considered with special reference to developing Asian countries.

Impact of Trips on India keeping in view public health and sector and Traditional Knowledge has also been covered in this study.

Also emerging regime of patent law in India has been traced by studying judicial decisions.

1.4 Research Methodology

The researcher has adopted doctrinal method of research.

The study was exploratory, analytical and comparative in nature.

The study was carried out by exploring various statutory provisions relating to Patents in different countries. Also International Instruments dealing with IPRs have also been considered here.

The researcher has relied on the various primary sources of law like Aayyangar Committee Report, Judicial decisions of SC and HC, WTO TEXT, Patent cooperation Treaty and Agreement on Trade Related Aspects of Intellectual property.

The researcher has also referred secondary sources of law like journals, books published by eminent authors on patents, original websites of WTO and WIPO. Material from various national and international conferences, seminars and workshops attended by researcher were also great help for this study.

1.5 Limitations of Research Study

As patent regime is emerging rapidly it has proved to be a huge task for researcher. Also scope of granting patents is changing in modern times. India has obligations towards many international IPR agreements; hence all facets of patent regime could not be covered in this study. Agriculture patenting has also not been included in this study.

1.6 Utility of study

1. The research involves a in-depth study of history and evolution of patents spanning different time periods.
2. Evolution of patent regime right from its conception at the hands of Raj has been undertaken here.

3. Also role of WTO as far as developing countries and their patent regime has also been considered here.
4. Implications of emerging patent regime have been analyzed here in detail.
5. Impact of TRIPS on patent law in India has also been scrutinized.
6. This study is useful to the students who want to study patent regime in detail for the purpose of academics and research.

2. Chapters

This thesis is divided into following chapters:

1. Introduction
2. Historical Overview of Patent Law
3. WTO and TRIPS
4. Novartis case and Implications of New Patent Regime on Indian Pharmaceutical Industry
5. Current and emerging issues of Patent Regime: Global Challenges
6. Judicial pronouncements on Patents
7. Conclusion and Suggestions

2.1 Chapter-1 : Introduction

Supreme Court observed in R. C. Cooper v Union of India[12]:

"Property means the highest right a man can have to anything being that right which one has to lands or tenements, goods or chattels which does not depend on another's courtesy: it includes ownership, estates and interests in corporeal things, and also rights such as trade-marks, copyrights, patents…."

It is often said that law originated with the institution of property. Society may not exist without property. The interrelationship between law and property was expressed by Bentham thus:

"Property and law are born together and die together. Before law was made there was no property, take away law and property ceases."

In the beginning property included nothing more than corporeal property meaning right of ownership in corporeal object or that object itself. In this sense a man's land, chattels, shares and the debts due to him are his property. Corporeal property is the right of ownership in material things. It is said that the sate and law came into existence only for protection of the right of property.

In modern times property has been given very wide meaning. The subject matter of a right of property is either material or immaterial thing. A

[12] AIR 1970 SC 564

material thing is a physical object, the immaterial things which are recognized by law as the subject matter of rights of various immaterial products of human skills and labour.

In recent times a form of property called intellectual property has come into existence and its importance is growing. The immaterial products of a man's brain may be as valuable as his land or his goods. The law therefore gives him a proprietary right in it, and the unauthorized use of it by other person is a violation of his ownership, no less than theft or trespass is. The term "Intellectual Property" has come to be internationally recognized as covering patents, industrial designs, copyright, trade marks, know how and confidential. Patents, designs and trademarks used to be considered as different kinds of "industrial property". But when copyright and confidential information were included the term 'intellectual property', is a more appropriate description for this class of property.

All forms of intellectual property are different kinds of monopoly rights conferred by statute. These monopoly rights are conferred for limited periods subject to certain conditions. In the case of patents for new inventions the patentee gets the exclusive right to manufacture the product patented or to use the process patented for a maximum period of 20 years. After the expiry of the term of the patent, the invention becomes public property any person can freely use it.

2.2 Chapter-2 : Historical Overview of Patent Law

Greek patent

The system of conferring exclusive privileges on inventors is not of recent origin. For instance, Phylarcus, a great historian of the 3rd century B.C., writing about Sybaris, a Greek colony famous for living a life of luxury and self-indulgence, says that about the year 500 B.C., it had a law that, if any confectioner or cook invented any peculiar and exclusive dish, no other artist was allowed to make it for a year, but he alone who invented it was entitled to all the profit to be derived from the manufacture of it for that time, in order that others might be induced to labour at excelling in such pursuits.

English and Other European Patents

The Statute of Monopolies enacted in England in 1624 A.D. is the earliest known legislation for this purpose. This statute provided that:

- Patents may be granted only in respect of new manufactures which, at the time of grant, were not in use within the realm,
- Patents may be granted only to the true and first inventors of such manufactures,
- The duration of patent privileges shall be limited to a term of 14 years,

- The patent privileges so conferred shall not be contrary to law, mischievous to the state by rising prices of commodities at home or hurt of trade, or generally inconvenient.

The origin of the modern patent institution is usually traced to the provisions of Statute of Monopolies. According to one view this statute has been called the Magna Carta of the rights of inventors, not because it originated patent protection of inventors, but because it was the first general law of the modern state to lay down the principle that only the first and true inventor of the manufacture should be granted a monopoly patent. Others have felt that it was not a patent law in the sense that it did not represent a new regulatory system. It did however abolish the royal prerogative to grant monopoly privileges excepting only the privileges granted for a term of fourteen years for the sole working or making of any manner of new manufacture.

2.3 Chapter-3 : WTO and TRIPS

- The WTO Agreements provide legal ground rules for international commerce.

- These agreements are contracts which bind governments to keep their trade policies within agreed limits.

- The main aim is to help producers of goods and services, exporters and importers conduct their business and at the same time as these agreements are negotiated and signed by the government, they allow these governments to meet social and environmental objectives also.

- The main purpose of WTO is to help trade flow freely and for these remove obstacles. Making companies and governments aware about world trade rules and guaranteeing them that there shall be no sudden policy changes.

- So these rules have to be transparent and predictable

The TRIPS Agreement is added to the Agreement establishing the WTO as Annexure IC. TRIPS is an integral part of WTO and is binding on all member nations. It is a multilateral trade agreement. It is a **minimum standards agreement**. It encourages countries to provide a high level of intellectual property protection. It lays down the minimum protection to be given for each category of intellectual property rights in national law of each WTO country. It also lays down procedures and remedies to be provided by each member country for intellectual property rights enforcement. The starting points of TRIPS are

a. The Paris Convention (1967) for Industrial Patents
b. Berne Convention (1971) for Copyrights

2.4 Chapter-4 : Novartis case[13] and Implications of New Patent Regime on Indian Pharmaceutical Industry

The Supreme Court has taken a very rational decision by denying the patent protection to the crystalline form of Glivec, and thereby keeping a check on "EVERGREENING' of the drug. The time period provided to a patented drug is sufficient to generate sufficient incentives for the innovator, but extending the patent by generating the salt form without any increment in efficacy is just unacceptable. The healthcare sector's primary purpose is to serve the mankind and to give it a healthy life. It shouldn't be viewed through business perspective everytime. **The Supreme Court affirmed that India has adopted a standard of pharmaceutical patenting that is stricter than that followed by the US or the EU.** For India, a patent applicant must not only show that a new form of known compound is different than an old form, but that the modification will result in an improvement in the treatment of the patient. The Indian Parliament, supported by the Supreme Court, has decided that Indian consumers should only pay for expensive patented products when those products represent a genuine advance over older versions**.** It is important to note what the Supreme Court did not say. It did *not* say that a new form of known compound may never be patented. It did *not* say that improving the bioavailability characteristics of the drug may never result in enhanced efficacy. It left open the question whether enhanced efficacy refers narrowly to

[13] *Novartis v Union of India and Others, Civil Appeal No. 2706-2716 of 2013*

curative effect, or more broadly to improved safety profile and reduced toxicity.

2.5 Chapter-5 : Current and Emerging Issues of Patent Regime: Indian and Global Challenges

Public Health and Patents

Although scientific and technological innovation has contributed to significant improvements in health conditions, health crises, relating, in particular, to malaria, tuberculosis, and, avian influenza, continue to create major problems in many parts of the world.

In various national and international fora, solutions are sought in respect of the role of patents in pharmaceutical innovation and fair and affordable access to health care.

The patent system is designed to promote innovation and, at the same time, offer a mechanism ensuring that the fruits of that innovation are accessible to society. In the contexts of public health, the challenge for policy makers is to find an optimal balance between the rights of patent owners, who provide technological innovations to improve health conditions, and the needs of the general public.

Traditional Knowledge

Local or indigenous knowledge is called traditional knowledge. The term indigenous is derived from Lain term “indu” and “gignere”. Indu means in or within. Gignere means to beget. Hence term indigenous means it has originated in and produced, growing, living or occurring naturally in a particular region or environment. Indigenous people have permanent roots of origin. Knowledge can be cultivated and inculcated by all people either by initiation or by indigenization process once the people find that the tradition enjoys long cherished prevalence and possession turning it into indigenous character.

- Representatives of TK holders have opposed patents drawing on their TK – concerning the use and extracts from the ***neem tree*** and use of ***turmeric*** as a wound healing agent.
- In 2001 ***China*** granted more than 3000 patents on innovative developments within the field of traditional Chinese Medicine.

Besides intellectual property development in traditional knowledge also affects:

- Food and agriculture
- Biological diversity
- Human rights particularly of indigenous people

- Cultural heritage
- Health and
- Desertification and the Environment
- Trade and economic development

Issues of development and protection of traditional knowledge involve

- Is the IP system compatible with the values and interest of traditional communities or does it privilege individual rights over the collective interests of the community?
- Can IP booster the cultural identity of indigenous and local communities and give them greater say in the management and use of their TK?
- Has the IP system been used to misappropriate TK failing to protect interests of indigenous and local communities?
- What can be done – legally, practically to ensure that the IP system functions better to serve the interests of traditional communities?
- What forms of respect and recognition TK would deal with; concerns about TK and give communities the tools they need to safeguard their interests?

- To what extent traditional knowledge should be protected as property and at the same time who should own these rights?

- Protection of patent or covering patent like subject-matter such as traditional medicines based upon local plants and traditional knowledge related to these medicines.

2.6 Chapter-6 : Judicial Pronouncements on Patents

Concept of Invention

The concept of an invention is of vital importance while assessing its patentability. There are two defenses that a defendant can take up, either together or independently to assail the validity of the patent at the interim injunction stage:

I. That the invention does not meet any of the conditions specified in section 2(1)(J) for a product or process to qualify as an invention
II. The invention cannot be patented under section 3 of the Act

As per section 2(1)(j) of the Patents Act, invention is defined as "a new product or process involving an inventive step and capable of industrial application." There are thus three important expressions in this definition of invention that lend colour and character to this term namely – new, inventive step and capable of industrial application. This new definition traces its roots

to the language in the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

Art 27(1) of TRIPS: Patentable subject matter

Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.

Footnote 5 found after first sentence to Art 27(1) reads:

For the purposes of this Article, terms 'inventive step' and 'capable of industrial application' may be deemed by a Member to be synonymous with the terms 'non obvious' and 'useful' respectively. This is itself indicative of the fact that the TRIPS Agreement only reaffirms the position in common law, followed in India as well, that an invention must be novel and non obvious and possess utility.

Farbewerke Hoechst Aktiengesellschaft v Unichem Laboratories,[14]

Here in Bombay High Court considered the scope of the term invention when the methods of manufacture were previously known. In this case court cited the observation in **May & Baker Ltd v Ciba Ltd,**[15] that an invention consisting of production of a substance from known materials and using

[14] AIR 1969 Bom 2551, (1974) 76 Bom LR 13
[15] (1948) 65 RPC 255

known methods would be patentable if the final substance produced was truly new as well as useful as opposed to being merely an additional member of known series. The Court also clarified that even when an invention consisted of production of further members of a known series whose useful attributes had already been described or predicted, it may possess sufficient subject matter to support a valid patent provided that patent was

1. Based upon some substantial advantage to be gained from the use of the selected members of known series of family of substances
2. The whole of the selected members possessed this advantage and
3. This advantage was peculiar to selected group

In **TVS Motor Co. v Bajaj Auto Ltd,**[16] the respondent obtained a patent for an improved internal combustion engine and sought an injunction to restrain the appellant from infringing the said patent through the manufacture of a proposed 125 cc engine motorcycle, branded as the 'Flame'. The respondent claimed that the invention was directed to improve the combustion of lean fuel mixture in the small bore engine ranging between 45 mm and 70 mm for improved fuel efficiency by using a pair of spark plugs to ignite the air fuel mixture.

[16] MIPR 2010 (1) 9

2.7 Chapter-7 : Conclusion and Suggestions:

From the above discussion, following are my conclusions:

The question still remains as to the constitutional validity of New Patent Law. The detailed examination and the impact of several provisions of Patent Law is still in initial stages. By the passage of time, the functioning of present law may be not practical or may prove to be harsh and unrealistic.

Examining the Novartis case, the researcher feels that the drug market may go high, as against the basic needs of people. Even if we allow this kind of patent, it will impact research and development in pharmaceutical market.

Also Evergreening provision requires further scrutiny. The researcher is of the opinion that patent should not be extended for the same drug, beyond twenty years only for minor changes introduced therein. Such a drug should then only be included in list of generic drugs.

Implications of TRIPS Agreement for developing countries do not seem to be as favourable as compared with developed nations. Impact of TRIPS on sustainable development needs more detailed analysis.

Suggestions:

India has to take into consideration welfare and interest of people before complying strictly with new Patent Regime.

Amendments are suggested in the WTO structure for overall sustainable development. Developing countries like India should make wholesome use of flexibilities mentioned in Dispute Settlement Mechanism of WTO.

Developed countries should not impose their will on developing countries as far as IP Regime is considered.

The firm stand of SC in Novartis case is welcome keeping in view our constitutional ideals. Hope judiciary shall continue this holistic approach in future also.

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19. http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm

20. http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm

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Signature of Researcher Signature of Supervising Teacher

List of Cases

The following cases have been considered in this study:

1. R.C.Cooper v Union of India, AIR 1970 SC 564:(1970) 3 SCR 530
2. Novartis v Union of India and Others, Civil Appeal No. 2706-2716 of 2013
3. Farbewerke Hoechst Aktiiengesellschaft v Unichem Laboratories, AIR 1969 Bom 2551, (1974) 76 Bom LR 13
4. May & Baker Ltd v Ciba Ltd, (1948) 65 RPC 255
5. TVS Motor Co. v Bajaj Auto Ltd, MIPR 2010 (1) 9